



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2006-0766; FRL-8887-8]

Tolerance Crop Grouping Program III

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to its pesticide tolerance crop grouping regulations, which allow the establishment of tolerances for multiple, related crops based on data from a representative set of crops. The present revisions would expand existing crop groups for stone fruits and tree nuts by establishing new crop subgroups and/or adding new commodities. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes and, in particular, to assist in making available lower risk pesticides for minor crops, both domestically and in countries that export food to the United States. This is the third in a series of planned crop group updates expected to be proposed over the next several years.

DATES: Comments must be received on or before *[insert date 60 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0766, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2006-0766. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: nollen.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment

that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:
 - i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
 - ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
 - iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
 - iv. Describe any assumptions and provide any technical information and/or data that you used.
 - v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
 - vi. Provide specific examples to illustrate your concerns and suggest alternatives.
 - vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
 - viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Tolerance-Setting Requirements and Petitions to Expand the Existing Crop Grouping System

EPA is authorized to establish maximum residue limits or tolerances for pesticide chemical residues in or on food commodities under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a). EPA establishes pesticide tolerances only after determining that aggregate exposure to the pesticide is considered safe. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) enforce compliance with tolerance limits.

Traditionally, tolerances are established for a specific pesticide and commodity combination. However, under EPA's crop grouping regulations (40 CFR 180.41), a single tolerance may be established that applies to a group of related commodities. For example, the current Stone Fruit Crop Group 12 includes 11 stone fruit commodities, including cherry, peach, and plum. The proposed Stone Fruit Crop Group 12-11 expands on the existing crop group and will include 22 commodities, if adopted. Crop group tolerances may be established based on residue data from designated representative commodities within the group. Representative commodities are selected based on EPA's determination that they are likely to bear the maximum level of residue that could occur on any crop within the group. Once a crop group tolerance is established, the tolerance level applies to all commodities within the group.

This proposed rule is the third in a series of planned crop group amendments expected to be completed over the next several years. Specific information regarding the history of the crop group regulations, the previous amendments to the regulations and the process for amending crop groups can be found in the **Federal Register** of May 23, 2007 (72 FR 28920) (FRL-8126-1). Specific information regarding how the Agency implements crop group amendments can be found in 40 CFR 180.40(j).

Today's proposal is based upon two petitions developed by the International Crop Grouping Consulting Committee (ICGCC) workgroup and submitted to EPA by a nationwide cooperative project, the Interregional Research Project Number 4 (IR-4). These petitions and the monographs supporting them have been included in the docket for the proposed rule. EPA expects that a series of additional petitions seeking amendments and changes to the crop grouping regulations (40 CFR 180.41) will originate from the ICGCC workgroup over the next several years.

EPA believes that this proposal is a burden-reducing regulation. It will provide for greater sharing of data by permitting the results from a magnitude of residue field trial studies in one crop to be applied to other, similar crops. The primary beneficiaries are minor crop producers and consumers. Minor crop producers will benefit because lower registration costs will encourage more products to be registered for use on minor crops, providing additional tools for pest control. Consumers are expected to benefit by having more affordable and abundant food products available. Secondary beneficiaries include pesticide registrants, as expanded markets for pesticide products will lead to increased sales.

EPA believes that data from representative crops will not underestimate the public exposure to pesticide residues through the consumption of treated crops. IR-4, which is publicly funded, will also more efficiently use resources as a result of this rule. Revisions to the crop grouping scheme will result in no appreciable costs or negative impacts to consumers, minor crop producers, pesticide registrants, the environment, or human health.

B. International Considerations

1. *North American Free Trade Agreement (NAFTA) partner involvement in proposal.* EPA's Chemistry Science Advisory Council (ChemSAC), an internal Agency peer review committee, provided a detailed analysis for each proposed crop group to Canada's Pest Management Regulatory Agency (PMRA), IR-4, and the government of Mexico for their review and comment, and invited these parties to participate in the ChemSAC meeting to finalize the recommendations for each petition.

PMRA has indicated that it will, in parallel with the United States effort and under the authority of Canada's Pest Control Products (PCP) Act (2002), establish equivalent crop groups. Additionally, once the new crop groups become effective in the United States, Mexico will have them as a reference for the establishment of maximum residue limits in Mexico.

2. *Relationship of proposal to Codex activities.* The American and Canadian Delegations to the Codex Committee on Pesticide Residues (CCPR) have an ongoing effort to harmonize the NAFTA crop groups and representative commodities with those being developed by Codex, an international commission created to develop international food standards, guidelines and related texts, as part of their revision of the *Codex Classification of Foods and Feeds*. Canada and the United States are working closely with the Chairs of the Codex group for this project (Netherlands and the United States) to coordinate the U. S. crop group amendments with the efforts to amend the Codex crop groups. The goals of coordinating these NAFTA activities with Codex activities are to minimize differences within and among the U. S. and Codex groups and to develop representative commodities for each group that will be acceptable on an international

basis. These efforts could lead to the increased harmonization of tolerances and maximum residue level recommendations.

C. Scheme for Organization of Revised and Pre-existing Crop Groups

EPA has amended the generic crop group regulations to include an explicit scheme for how revised crop groups will be organized in the regulations.

In brief, the regulations now specify that when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in §180.41; (2) insert the new, related crop group immediately after the pre-existing crop group in the CFR; and (3) title the new, related crop group in a way that clearly differentiates it from the pre-existing crop group. The new, related crop group will retain roughly the same name and number as the pre-existing group except that the number will be followed by a hyphen and the final two digits of the year it is established. For example, EPA is proposing to revise crop group 12: Stone Fruit Group. The revised group will be titled Crop Group 12-11: Stone Fruit Group. Although EPA will initially retain pre-existing crop groups that have been superseded by new crop groups, EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop groups to tolerances with the coverage of the new crop group. This conversion will be effected both through the registration review process and in the course of establishing new tolerances for a pesticide. To this end, EPA requests that petitioners for tolerances address this issue in their petitions.

For example, assuming EPA adopts the proposed amendment that would create Crop Group 14-11: Tree Nut Group, any tolerance petition for a pesticide that has a

Group 14 tolerance should include a request that the Group 14 tolerance be superseded by a Group 14-11 tolerance, since the representative commodities are equivalent. When all crop group tolerances for a superseded crop group have been revised or removed, EPA will remove the superseded group from § 180.41.

III. Specific Proposed Revisions

This Unit explains the proposed amendments to the crop group regulations.

A. Crop Group 12-11: Stone Fruit Group

EPA is proposing to revise Stone Fruit Crop Group 12 in the following manner.

1. *Add commodities.* EPA proposes to amend existing Crop Group 12 by expanding it from 11 to 22 commodities. The existing Crop Group 12 contains the following 11 commodities:

- Apricot, *Prunus armeniaca*;
- Cherry, sweet, *Prunus avium*;
- Cherry, tart, *Prunus cerasus*;
- Nectarine, *Prunus persica*;
- Peach, *Prunus persica*;
- Plum, *Prunus domestica*, *Prunus* spp.;
- Plum, Chickasaw, *Prunus angustifolia*;
- Plum, Damson, *Prunus domestica* spp. *insititia*;
- Plum, Japanese, *Prunus salicina*;
- Plumcot, *Prunus armeniaca* x *P. domestica*;
- Prune (fresh), *Prunus domestica*, *Prunus* spp.

EPA proposes to expand Crop Group 12 by adding the following 11 additional commodities to the commodities already included in Crop Group 12 and naming the new crop grouping as Crop Group 12-11:

- Apricot, Japanese, *Prunus mume* Siebold & Zucc.;
- Capulin, *Prunus serotina* Ehrh. subsp. *capuli* (Cav.) McVaugh;
- Cherry, black, *Prunus serotina* Ehrh. subsp. *Serotina*;
- Cherry, Nanking, *Prunus tomentosa* Thunb.;
- Chokecherry, *Prunus virginiana* L.;
- Plum, American, *Prunus americana* Marshall;
- Plum, beach, *Prunus maritima* Marshall;
- Plum, Canada, *Prunus nigra* Aiton;
- Plum, cherry, *Prunus cerasifera* Ehrh.;
- Plum, Klamath, *Prunus subcordata* Benth.;
- Sloe, *Prunus spinosa* L.;

Including cultivars, varieties, and/or hybrids of these.

The additional commodities proposed for Stone Fruit Crop Group 12-11 were chosen based on similarities and characteristics of the *Rosaceae* family, of which all existing and proposed commodities are members. The commodities were also chosen based on similarities to the existing stone fruit commodities in cultural practices, edible food and animal feed portions, residue levels, geographical locations, pest problems, established tolerances, and for international harmonization purposes. The scientific names for each commodity entry proposed for Stone Fruit Crop Group 12-11 are also being proposed to be updated to reflect the current taxonomic name.

2. *Create crop subgroups.* EPA proposes to add three crop subgroups to Crop Group 12-11: Stone Fruit Group, as follows:

i. *Cherry subgroup 12-11A. (Representative commodities-* Sweet cherry or Tart cherry). Six commodities proposed in this subgroup are: Cherry, black; Capulin; Cherry, Nanking; Cherry, sweet; Cherry, tart; and Chokecherry; including cultivars, varieties and/or hybrids of these.

ii. *Peach subgroup 12-11B. (Representative commodity-* Peach). Two commodities proposed in this subgroup are: Nectarine and Peach, including cultivars, varieties and/or hybrids of these.

iii. *Plum subgroup 12-11C. (Representative commodities-* Plum or Prune, plum). Fourteen commodities proposed in this subgroup are: Apricot; Apricot, Japanese; Plum; Plum, American; Plum, beach; Plum, Canada; Plum, cherry; Plum, Chickasaw; Plum, Damson; Plum, Japanese; Plum, Klamath; Plumcot; Plum, prune; Sloe; including cultivars, varieties and/or hybrids of these.

The creation of these subgroups and the choice of representative commodity designations are based on similarities in pest pressures, cultural practices, and the edible portion of the commodity. The Agency also determined that three subgroups would be appropriate, as listed above, in order to harmonize with Codex subgroups and representative commodities for stone fruit. EPA has determined that residue data on the designated representative crops will provide adequate information on residue levels in crops and subgroups.

B. Crop Group 14-11: Tree Nut Group

EPA is proposing to revise Tree Nuts Crop Group 14 in the following manner.

Add commodities. EPA proposes to amend the existing Tree Nuts Crop Group 14 by expanding it from 12 to 39 commodities. The existing Crop Group 14 contains the following 12 commodities:

- Almond, *Prunus dulcis*;
- Beechnut, *Fagus* spp.;
- Brazil nut, *Bertholletia excelsa*;
- Butternut, *Juglans cinerea*;
- Cashew, *Anacardium occidentale*;
- Chestnut, *Castanea* spp.;
- Chinquapin, *Castanea pumila*;
- Filbert (hazelnut), *Corylus* spp.;
- Hickory nut, *Carya* spp.;
- Macadamia nut (bush nut), *Macadamia* spp.;
- Pecan, *Carya illinoensis*;
- Walnut, black and English (Persian), *Juglans* spp.

EPA proposes to expand crop group 14 by adding the following 26 commodities and naming the new crop grouping as Crop Group 14-11. The added commodities are:

- African nut-tree, *Riciodendron heudelotii* (Baill.) Heckel;
- Brazilian pine, *Araucaria angustifolia* (Bertol.) Kuntze;
- Bunya, *Araucaria bidwillii* Hook.;
- Bur oak, *Quercus macrocarpa* Michx.;
- Cajou nut, *Anacardium giganteum* Hance ex Engl.;
- Candlenut, *Aleurites moluccanus* (L.) Willd.;

- Coconut, *Cocos nucifera* L.;
- Coquito nut, *Jubaea chilensis* (Molina) Baill.;
- Dika nut, *Irvingia gabonensis* (Aubry-Lecomte ex O'Rorke) Baill.;
- Ginkgo, *Ginkgo biloba* L.;
- Guiana chestnut, *Pachira aquatica* Aubl.;
- Heartnut, *Juglans ailantifolia* Carrière var. *cordiformis* (Makino) Rehder, *J.*

ailantifolia Carrière;

- Japanese horse-chestnut, *Aesculus turbinata* Blume;
- Mongongo nut, *Schinziophyton rautanenii* (Schinz) Radcl.-Sm.;
- Monkey-pot, *Lecythis pisonis* Cambess.;
- Monkey puzzle nut, *Araucaria araucana* (Molina) K. Koch;
- Okari nut, *Terminalia kaernbachii* Warb.;
- Pachira nut, *Pachira insignis* (Sw.) Savigny;
- Peach palm nut, *Bactris gasipaes* Kunth var. *gasipaes*, *B. gasipaes* Kunth;
- Pequi, *Caryocar brasiliense* Cambess., *C. villosum* (Aubl.) Pers., *C. nuciferum*

L.;

- Pili nut, *Canarium ovatum* Engl., *C. vulgare* Leenh., *C. indicum* L.;
- Pine nut, *Pinus edulis* Engelm., *P. koraiensis* Siebold & Zucc., *P. sibirica* Du Tour, *P. pumila* (Pall.) Regel, *P. gerardiana* Wall. ex D. Don, *P. monophylla* Torr. & Frém., *P. quadrifolia* Parl. ex Sudw., *P. pinea* L.;
- Pistachio, *Pistacia vera* L.;
- Sapucaia nut, *Lecythis zabucaja* Aubl.;
- Tropical almond, *Terminalia catappa* L.;

•Yellowhorn, *Xanthoceras sorbifolium* Bunge

Including cultivars, varieties, and/or hybrids of these.

EPA additionally proposes to include the current Crop Group 14 entry for Walnut, black and English (Persian) (*Juglans* spp.) as two separate commodity entries in the new crop group, as follows: Walnut, black, *Juglans hindsii* Jeps. ex R. E. Sm., *J. microcarpa* Berland., *J. nigra* L.; and Walnut, English, *Juglans regia* L., including cultivars, varieties, and/or hybrids of these.

There are 18 different plant families represented in the proposed Tree Nut Crop Group 14-11. The proposed commodities were chosen based on similarities in edible food and animal feed items, residue levels, geographical locations, established tolerances, and for international harmonization purposes. The commodities were also chosen based on similar cultural practices and uses, including harvesting, processing (hulling, drying), marketing, and nutritional values. Therefore, all of these commodities were found to have similar characteristics and uses to become a member of Tree Nut Crop Group 14-11. The scientific names for each commodity entry proposed for Tree Nut Crop Group 14-11 have also been updated to reflect the current taxonomic name.

Pistachio was previously rejected as a member of Tree Nuts Crop Group 14, because there were concerns that the unsealed husks or shells surrounding pistachio nuts would expose the edible portion to significantly higher pesticide residues than would be found in other tree nuts. Subsequent to that decision, EPA examined scientific literature (Refs. 1 and 2) and found that although the pistachio shell splits before harvest, the nutmeat remains inside an intact hull, so it may not be exposed to a pesticide. Based on this information, a study was conducted to determine how intact the outer hull that

surrounds the shell and nutmeat remains during the season, from flowering to harvest. The results of this study confirmed that the shells of pistachio nuts split naturally in the orchard [$\leq 80\%$] prior to harvest, but the hull stays intact, covering and protecting the kernel from invasion by molds, insects, and nonsystemic pesticides (Ref. 3). Therefore, the concerns that the unsealed husks or shells (splits) found in pistachio nuts would expose the edible portion to significantly higher pesticide residues than would occur in other tree nuts proved to be unfounded. Additionally, the EPA conducted an analysis of tolerances that had been established for 15 pesticides on pistachios and compared the tolerance levels with those registered on the same pesticides for other tree nuts. In all cases except for permethrin, the established tolerances were identical. Even with permethrin (§180.378), the tolerance of 0.1 ppm established on pistachio was well within the Crop Group limit of 5X for the other tree nuts, which were established at 0.05 ppm. As a result, the Agency concluded that pesticide residues on pistachio nutmeat should be similar to the other nut crops that are members of the existing Tree Nut Crop Group, and are therefore appropriate for inclusion in the revised crop group proposed in this rule.

IV. References

The following references are used in this document and are available in the docket for this proposed rulemaking.

1. Sommer, N.F., J.R. Buchanan, and R.J. Fortlage. 1986. "Relation of Early Splitting and Tattering of Pistachio Nuts to Aflatoxin in the Orchard." *Phytopathology* 76:692-694

2. Sommer, N.F. 1994. "Genetic Variation in the Resistance of Various Cultivars of Tree Nut to *Aspergillus flavus*," Univ. CA. Project Report #0500-00029-006-01S.

USDA Current Research Information Service.

3. Schneider, Bernard A. 2000. "Review of Request for Residue Data Developed for Almonds to be Translatable to Pistachios for Establishing Tolerances."

V. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

EPA prepared an analysis of the potential costs and benefits associated with this action in the first proposed rule published May 23, 2007 (77 FR 28920). This analysis is contained in "Economic Analysis Proposed Expansion of Crop Grouping Program." A copy of the analysis is available in the docket and is briefly summarized here.

This is a burden-reducing regulation. Crop grouping has saved money by permitting the results of pesticide exposure studies for one crop to be applied to other, similar crops. This regulation expands certain existing crop groups and adds one new crop group.

The primary beneficiaries of the regulation are minor crop producers and consumers. Specialty crop producers will benefit because lower registration costs will encourage manufacturers to register more pesticides on minor crops, providing these growers with additional pesticide options. The greater availability of pesticides for use in the United States as well as increased coverage of tolerances to imported commodities

may result in a larger supply of imported and domestically produced specialty produce at potentially lower costs benefiting consumers. Secondary beneficiaries are pesticide registrants, who benefit because expanded markets for pesticides will lead to increased sales. IR-4 and EPA, which are publicly funded Federal government entities, will more efficiently use resources as a result of the rule.

EPA will conserve resources if, as expected, new or expanded crop groups result in fewer emergency pesticide use requests from specialty crop growers. Further, new and expanded crop groups will likely reduce the number of separate risk assessments and tolerance rulemaking that EPA will have to conduct. The public will further benefit from the increased international harmonization of crop classification and nomenclature, harmonized commodity import and export standards, and increased potential for resource sharing between EPA and other pesticide regulatory agencies. Revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, specialty crop producers, and pesticide registrants.

The benefits of the proposed rule can be shown through the example of the impact of changes to Crop Group 3 in a prior rulemaking from December 7, 2007 (72 FR 69150). That rulemaking established Bulb Vegetable Crop Group 3-07, which expanded upon the related Crop Group 3, Bulb Vegetables from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the establishment of the expanded crop group, adding tolerances for the 18 crops would have required a minimum of 18 field trials at a cost of approximately \$5.4 million (assuming \$300,000 per field trial). However, after promulgation of the new group, these 18 new crops could obtain pesticide tolerances under a Crop Group 3-07 tolerance with no field trials in addition to those required on the

representative commodities (which did not change with the expansion of the group).

Fewer field trials mean a greater likelihood that these commodities will obtain tolerance coverage under the FFDCA, aiding growers and reducing the costs of both the IR-4 data development process and the EPA review process.

B. Paperwork Reduction Act

This action does not impose any new information collection requirements that would require additional review or approval by OMB under the provisions of the Paper Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* However, the proposed rule is expected to reduce mandatory paperwork due to a reduction in required studies. The proposed rule will have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme, than would otherwise be required.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This proposed rule does not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments.

For the purpose of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities” (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed action provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4), EPA has determined that this proposed regulatory action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this action does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an economically significant regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This action is not a “significant energy action” as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as a regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor is it likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not impose any technical standards that would require EPA to consider the use of any voluntary consensus standards.

J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, this action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, pesticides and pests.

Dated: October 27, 2011.

Stephen A. Owens,

Assistant Administrator for Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q). 346a and 371.

2. In § 180.41 amend as follows:

a. Redesignate paragraphs (c)(17) through (c)(26) as paragraphs (c)(18) through (c)(27), respectively, and add a new paragraph (c)(17).

b. Redesignate newly redesignated paragraphs (c)(21) through (c)(27) as paragraphs (c)(22) through (c)(28), respectively, and add a new paragraph (c)(21).

These proposed amendments read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(17) *Crop Group 12-11*: Stone Fruit Group.

(i) *Representative commodities*. Sweet cherry or Tart cherry, Peach, and Plum or Prune plum.

(ii) *Commodities*. The following Table 1 is a list of all commodities included in Crop Group 12-11.

TABLE 1. – CROP GROUP 12-11: STONE FRUIT GROUP

| Commodities | Related Crop Subgroup |
|--|-----------------------|
| Apricot (<i>Prunus armeniaca</i> L.) | 12-11C |
| Apricot, Japanese (<i>Prunus mume</i> Siebold & Zucc.) | 12-11C |
| Capulin (<i>Prunus serotina</i> Ehrh. subsp. <i>capuli</i> (Cav.) McVaugh) | 12-11A |

| | |
|--|--------|
| Cherry, black (<i>Prunus serotina</i> Ehrh. subsp. <i>Serotina</i>) | 12-11A |
| Cherry, Nanking (<i>Prunus tomentosa</i> Thunb.) | 12-11A |
| Cherry, sweet (<i>Prunus avium</i> L.) | 12-11A |
| Cherry, tart (<i>Prunus cerasus</i> L.) | 12-11A |
| Chokecherry (<i>Prunus virginiana</i> L.) | 12-11A |
| Nectarine (<i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> (Suckow) C.K. Schneid) | 12-11B |
| Peach (<i>Prunus persica</i> (L.) Batsch var. <i>persica</i>) | 12-11B |
| Plum (<i>Prunus domestica</i> L. subsp. <i>Domestica</i>) | 12-11C |
| Plum, American (<i>Prunus americana</i> Marshall) | 12-11C |
| Plum, beach (<i>Prunus maritima</i> Marshall) | 12-11C |
| Plum, Canada (<i>Prunus nigra</i> Aiton) | 12-11C |
| Plum, cherry (<i>Prunus cerasifera</i> Ehrh.) | 12-11C |
| Plum, Chickasaw (<i>Prunus angustifolia</i> Marshall) | 12-11C |
| Plum, Damson (<i>Prunus domestica</i> L. subsp. <i>insititia</i> (L.) C.K. Schneid.) | 12-11C |
| Plum, Japanese (<i>Prunus salicina</i> Lindl.; <i>P. salicina</i> Lindl. var. <i>salicina</i>) | 12-11C |
| Plum, Klamath (<i>Prunus subcordata</i> Benth) | 12-11C |
| Plum, prune (<i>Prunus domestica</i> L. subsp. <i>Domestica</i>) | 12-11C |
| Plumcot (<i>Prunus hybr.</i>) | 12-11C |
| Sloe (<i>Prunus spinosa</i> L.) | 12-11C |
| Cultivars, varieties, and/or hybrids of these. | |

(iii) *Crop subgroups*. The following Table 2 identifies the crop subgroups for Crop Group 12-11, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2.— CROP GROUP 12-11: SUBGROUP LISTING

| Representative commodities | Commodities |
|--|---|
| Crop subgroup 12-11A. Cherry subgroup | |
| Cherry, sweet or Cherry, tart. | Capulin; Cherry, black; Cherry, Nanking; Cherry, sweet; Cherry, tart; Chokecherry; cultivars, varieties, and/or hybrids of these. |
| Crop subgroup 12-11B. Peach subgroup | |
| Peach. | Peach; Nectarine; cultivars, varieties, and/or hybrids of these. |
| Crop subgroup 12-11C. Plum subgroup | |
| Plum or Prune plum. | Apricot; Apricot, Japanese; Plum; Plum, American; Plum, beach; Plum, Canada; Plum, cherry; Plum, Chickasaw; Plum, Damson; Plum, Japanese; Plum, Klamath; Plumcot; Plum, prune; Sloe; cultivars, varieties, and/or hybrids of these. |

* * * * *

(21) *Crop Group 14-11. Tree Nut Group.*

[illegible]

| |
|---|
| Pine nut (<i>Pinus edulis</i> Engelm., <i>P. koraiensis</i> Siebold & Zucc., <i>P. sibirica</i> Du Tour, <i>P. pumila</i> (Pall.) Regel, <i>P. gerardiana</i> Wall. ex D. Don, <i>P. monophylla</i> Torr. & Frém., <i>P. quadrifolia</i> Parl. ex Sudw., <i>P. pinea</i> L.) |
| Pistachio (<i>Pistacia vera</i> L.) |
| Sapucaia nut (<i>Lecythis zabucaja</i> Aubl.) |
| Tropical almond (<i>Terminalia catappa</i> L.) |
| Walnut, black (<i>Juglans hindsii</i> Jeps. ex R. E. Sm., <i>J. microcarpa</i> Berland., <i>J. nigra</i> L.) |
| Walnut, English (<i>Juglans regia</i> L.) |
| Yellowhorn (<i>Xanthoceras sorbifolium</i> Bunge) |
| Cultivars, varieties, and/or hybrids of these. |

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